

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Robert G. Taub

Pimmit Branch  
Falls Church, Virginia

Docket No. A2011-90

ORDER DISMISSING APPEAL

(Issued January 20, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”<sup>1</sup> The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

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<sup>1</sup> United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 27, 2011, Elaine J. Mittleman (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Pimmit Branch located near Falls Church, Virginia (Pimmit Branch).<sup>2</sup> On October 26, 2011, Karl Ritchey intervened.<sup>3</sup> The Petition for Review is dismissed for lack of jurisdiction.

## II. PROCEDURAL HISTORY

On September 29, 2011, the Commission established Docket No. A2011-90 to consider the appeal, designated a Public Representative, informed the Postal Service that Petitioner had filed an application for suspension of the Final Determination, and directed the Postal Service to file its Administrative Record and any responsive pleadings.<sup>4</sup>

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<sup>2</sup> Petition for Review received from Elaine J. Mittleman regarding the Falls Church, Virginia post office 22043, September 27, 2011 (Petition). Falls Church is a suburb of Washington, DC.

<sup>3</sup> Petition for Review received from Karl Ritchey regarding the Falls Church, Virginia post office 22043, October 26, 2011. The deadline for filing appeals having passed, the Commission treated the Ritchey Petition as a notice of intervention. See Order Denying Application for Suspension, November 9, 2011, at 1, n.2 (Order No. 958).

<sup>4</sup> Order No. 882, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 29, 2011.

On October 7, 2011, the Postal Service filed its opposition to the application for suspension.<sup>5</sup> On October 12, 2011, the Postal Service filed the Administrative Record with the Commission.<sup>6</sup> On the same day Petitioner filed a reply to the Postal Service's opposition to the application for suspension,<sup>7</sup> and the Postal Service supplemented its opposition.<sup>8</sup> On November 8, 2011, the Commission posted a letter of support for the application for suspension received from John W. Foust, Dranesville (VA) District Supervisor.<sup>9</sup> On November 9, 2011, Petitioner supplemented her application for suspension.<sup>10</sup> Also on November 9, 2011, the Commission denied the application for suspension. See Order No. 958. On November 10, 2011, Petitioner filed a motion for reconsideration of Order No. 958.<sup>11</sup> The Postal Service closed the Pimmit Branch effective November 12, 2011.<sup>12</sup> On November 17, 2011, Petitioner filed a motion to reopen the Pimmit Branch.<sup>13</sup> The Postal Service filed its opposition to the motion on

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<sup>5</sup> Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Pimmit Branch, Falls Church, Virginia 22043, October 7, 2011.

<sup>6</sup> The Administrative Record is attached to the United States Postal Service Notice and Application for Non-Public Treatment, October 12, 2011 (Administrative Record). The Administrative Record includes, as pages 4-9 of Item No. 25, the Final Determination to Close the Pimmit Branch, VA Office and Continue to Provide City Delivery Service (Final Determination).

<sup>7</sup> Reply of Petitioner to Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Pimmit Branch, Falls Church, Virginia 22043, October 12, 2011 (Petitioner's Reply).

<sup>8</sup> United States Postal Service Notice and Application for Non-Public Treatment, October 12, 2011.

<sup>9</sup> The letter is also attached to the pleading identified in footnote 10.

<sup>10</sup> Petitioner's Supplement to Application for Suspension Falls Church, Virginia 22043, November 9, 2011.

<sup>11</sup> Motion of Petitioner for Reconsideration of Order No. 958, November 10, 2011.

<sup>12</sup> Postal Bulletin 22325, December 1, 2011, at 51.

<sup>13</sup> Motion of Petitioner to Reopen Pimmit Branch, November 17, 2011.

November 23, 2011.<sup>14</sup> Petitioner filed a reply to the Postal Service's opposition on November 29, 2011.<sup>15</sup>

During the course of the proceeding, the Commission ruled on two motions of Petitioner to supplement the Administrative Record.<sup>16</sup> Petitioner first sought an order directing the Postal Service to provide information on the possible relocation of a postal facility in Falls Church, directing the Postal Service to post documents relating to her appeal at the Pimmit Branch, and revising the procedural schedule.<sup>17</sup> In a second motion, Petitioner asked the Commission to direct the Postal Service to supplement the Administrative Record to explain why it chose the Pimmit Branch to study for possible closing, to correct references in the Final Determination to "Chevy Chase [Bank]," which Petitioner asserted no longer exists, and to revise the procedural schedule.<sup>18</sup>

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<sup>14</sup> United States Postal Service Answer in Opposition to Motion of Petitioner to Reopen Pimmit Branch, November 23, 2011.

<sup>15</sup> Reply of Petitioner to Opposition of Postal Service to Motion to Reopen Pimmit Branch, November 29, 2011.

<sup>16</sup> Order No. 1005, Order on Motions to Supplement the Record and Modifying Procedural Schedule, November 29, 2011. Petitioner has since filed other motions. One of those motions seeks to have the 120-day deadline for this proceeding extended by 5 days. Motion of Petitioner to Reset the Expiration Date of the Commission's 120-Day Decisional Schedule, January 17, 2012, at 2. The Postal Service responded to that motion on January 19, 2012. Answer of United States Postal Service in Opposition to Petitioner's Motion Dated January 17, 2012, to Reset the Expiration Date of the Commission's 120-Day Decisional Schedule, January 19, 2012. The procedural schedule sets January 20, 2012 as the deadline for issuing a decision in this appeal. Petitioner's appeal was posted on the Commission's website on September 27, 2011. If one uses that date as the "date received" for the appeal, the 120-day deadline for issuing a decision would be January 25, 2012. However, by statute, the Commission must use the postmark of the appeal as the "date received." 39 U.S.C. § 404(d)(6)(A). Petitioner's appeal was postmarked September 22, 2011, which produces a deadline of January 20, 2012.

<sup>17</sup> Motion of Petitioner to Request the United States Postal Service to Supplement the Record Concerning the Relocation of the Main Post Office in Falls Church, Virginia 22046, October 18, 2011.

<sup>18</sup> Motion of Petitioner to Request the United States Postal Service to Supplement the Record Concerning the Pimmit Branch Study Falls Church, Virginia 22043, November 7, 2011.

The Postal Service opposed supplementing the Administrative Record but did not oppose adjusting the procedural schedule.<sup>19</sup> The Commission denied the requests to supplement the Administrative Record but did extend the deadlines for filing briefs. Order No. 1005 at 5.<sup>20</sup> The Commission also directed the Postal Service to file “notice of any events that have made material facts (or findings) relied upon in the Final Determination obsolete or no longer valid.” *Id.* The Postal Service responded on December 2, 2011.<sup>21</sup>

On November 21, 2011, the Postal Service filed comments requesting that the Commission affirm its Final Determination.<sup>22</sup> On December 9, 2011, Petitioner filed her initial brief.<sup>23</sup> On December 16, 2011, the Postal Service filed supplemental comments.<sup>24</sup> On December 22, 2011, Petitioner filed a reply brief.<sup>25</sup>

### III. BACKGROUND

Planning for the closure of the Pimmit Branch began sometime before April 9, 2009. On that date, the Manager of Post Office Operations for the Northern Virginia District requested authorization to study the Pimmit Branch for closure because of the establishment of a new postal facility:

A new facility is being proposed for the Main Post Office at Falls Church which will contain Retail and Post Office Box operations. The purpose of this investigation is to determine the feasibility of

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<sup>19</sup> Answer of United States Postal Service in Opposition to Petitioner’s Motion to Request the United States Postal Service to Supplement the Record, October 25, 2011; Answer of United States Postal Service to Petitioner’s Motion Dated November 7, 2011, to Request the United States Postal Service to Supplement the Record, November 14, 2011.

<sup>20</sup> Order on Motions to Supplement the Record and Modifying Procedural Schedule, November 29, 2011 (Order No. 1005).

<sup>21</sup> United States Postal Service Response to Order No. 1005, December 2, 2011.

<sup>22</sup> Comments of United States Postal Service, November 21, 2011 (Postal Service Comments).

<sup>23</sup> Initial Brief of Petitioner Elaine J. Mittleman, December 9, 2011.

<sup>24</sup> Supplemental Comments of United States Postal Service, December 16, 2011 (Postal Service Supplemental Comments).

<sup>25</sup> Reply Brief of Petitioner Elaine J. Mittleman, December 22, 2011.

eliminating the Pimmit Branch and combining its operations with the proposed new retail facility for the main office.

Administrative Record, Item No. 1. Authorization to conduct the requested discontinuance study was given that same day, April 9, 2009. *Id.*

By separate letters dated April 29, 2009, the Post Office Review coordinator notified the presidents of the American Postal Workers Union and the National Association of Postal Supervisors of the Postal Service's intent "to conduct a study to determine the feasibility of eliminating the Pimmit Branch and consolidating operations with the new retail unit that is going to serve the Falls Church Main Post Office." *Id.*; Item No. 2.<sup>26</sup>

On November 20, 2009, the Post Office Review Coordinator prepared a Post Office Closing or Consolidation Proposal Fact Sheet (PS Form 4920) as part of the Pimmit Branch discontinuance study. *Id.*; Item No. 8. He gave the following reason for closing the Pimmit Branch: "Part of DAR Justification for Falls Church Main Office project."<sup>27</sup> *Id.* at 1 (Response to Item No. 7).

On June 8, 2009, the Postal Service announced that the Falls Church post office retail operations and Post Office Box services were being relocated from 301 Broad Street, Falls Church, Virginia, to 800 West Broad Street, Falls Church, Virginia. United States Postal Service, Postal News, Release No. 09-015.<sup>28</sup> The relocation was described in the following terms:

The move is necessary to make way for the new Falls Church City Center currently under construction. The new City Center will be built on the city-owned public parking lot currently used by Broad

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<sup>26</sup> Letter to Annette August-Taylor from Dennis E. Voorhees, April 29, 2009, at 1, *Id.*; Item No. 2 at 1 (Taylor/Voorhees Letter); Letter to Lloyd Cox from Dennis E. Voorhees, April 29, 2009, at 1, *Id.* at 2. (Cox/Voorhees Letter).

<sup>27</sup> The acronym "DAR" stands for "Decision Analysis Report," which is described as "a document prepared by the requiring authorization to recommend an investment for approval, and it is used for decisions regarding high dollar-value projects." Postal Service Supply Principles and Practices, § 1.16.4 Justify Postal Service Investment. Section 1.16.4 can be found at [http://about.usps.com/manuals/spp/html/spp1\\_079.htm](http://about.usps.com/manuals/spp/html/spp1_079.htm).

<sup>28</sup> Release No. 09-015 can be found at [http://about.usps.com/news/state-releases/va/2009/va\\_2009\\_0608.htm](http://about.usps.com/news/state-releases/va/2009/va_2009_0608.htm).

Street Postal Customers. All post office box customers have been notified of the move and will receive mail boxes at the new retail unit. The facility at 301 Broad Street will continue to house carrier delivery operations....Customers will pick up 'left notice' accountable mail, parcels, and hold mail from the new 800 [West] Broad Street location.

*Id.* at 1. The new facility is approximately five blocks west of the Falls Church post office and 0.5 miles closer to the Pimmit Branch.<sup>29</sup>

In a January 7, 2010 letter to post office box holders transmitting questionnaires, the senior manager of Post Office Operations stated that “the fact that we have the Falls Church main post office located approximately 1.7 miles away suggests that the continuation of the Pimmit classified branch may not be warranted.” Administrative Record, Item No. 9 at 4 (emphasis in original). He requested that completed questionnaires be returned by January 19, 2010. *Id.*

The final decision to close the Pimmit Branch was made on June 20, 2011. See Final Determination at 5. This decision was publicly announced on September 14, 2011, in a letter advising customers that the Pimmit Branch would close on November 10, 2011. Administrative Record, Item No. 27 at 1.

Prior to closing on November 10, 2011, the Pimmit Branch provided retail postal services and service to 303 post office box customers. Final Determination at 5. No delivery customers were served through this post office. Administrative Record, Item No. 3. Delivery customers picked up large packages and accountables at the Falls Church post office. *Id.* Item No. 5. The Pimmit Branch, an EAS-22 level facility, had retail access hours of 8:30 a.m. to 2:00 p.m. and 3:00 p.m. to 5:00 p.m., Monday through Friday, and was closed on Saturday. *Id.* at 5.

After the closure, retail services were available from the new Falls Church facility at 800 W. Broad Street, Falls Church, Virginia, located 2 miles away, as well as several

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<sup>29</sup> The distances are taken from MapQuest, which also shows that all three facilities are located along Virginia Route 7.

other locations within 2.2 miles of the Pimmit Branch.<sup>30</sup> *Id.* The 800 West Broad Street post office is an EAS-22 level post office, with retail hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:30 p.m. on Saturday. Six-hundred-eight (608) post office boxes are available. *Id.* Carrier delivery customers continue to use the Falls Church 22043 name and ZIP Code. The 303 post office box customers were required to change their addresses. *Id.*; Administrative Record, Item No. 27.

#### IV. PARTICIPANT PLEADINGS

*Petitioner.* Petitioner opposes the closure of the Pimmit Branch. She asserts that the Postal Service did not follow procedures required by law. Petition at 1-2. She also asserts that the Pimmit Branch is profitable, implying that there are no economic savings from closing the branch and that the Postal Service did not address concerns of walk-in customers. *Id.* at 2. She argues that carrier pickup is not a feasible alternative for her shipping needs and that customers will switch to competing carriers and that the 800 West Broad Street post office is an inconvenient alternative to the Pimmit Branch because of traffic and parking congestion as well as the length of time to travel by public transportation. *Id.* at 2-3. Finally, she asserts that closing the Pimmit Branch violates the community planning ethic of promoting pedestrian over vehicular traffic. *Id.* at 3.

*Postal Service.* The Postal Service argues that the Commission should either dismiss the appeal or affirm the determination to close the Pimmit Branch. Postal Service Comments at 1-2, 8; Postal Service Supplemental Comments at 2-5.

#### V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record

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<sup>30</sup> MapQuest estimates the driving distance between the Pimmit branch and the Falls Church Finance Unit to be approximately 1.7 miles (4 minutes driving time).



that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

The Postal Service argues that Petitioner's appeal does not fall within the Commission's jurisdiction. It offers two grounds for dismissal. First, the Postal Service argues that postal branches such as the Pimmit Branch are not "post offices" as that term is used in section 404(d). Second, it argues that patrons of the Pimmit Branch still have access to retail services in Petitioner's area of Northern Virginia, and the closing of the Pimmit Branch does not constitute a "closing" under Commission precedent, citing the Commission's order dismissing the appeal of the closing of the East Elko station in Elko, Nevada.<sup>31</sup> Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Pimmit Branch, Falls Church, VA 22043, October 7, 2011, at 2-3; United States Postal Service Notice and Application for Non-Public Treatment, October 12, 2011, at 2-3; Postal Service Comments at 2; Postal Service Supplemental Comments at 4-5.

The Commission and the Postal Service have long disagreed about the meaning of "post office" in section 404(d).<sup>32</sup> The Commission has held that a postal station or

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<sup>31</sup> Docket No. A2010-3, *In re East Elko Station, Elko, Nevada*, Order No. 477, June 22, 2010 (*East Elko*).

<sup>32</sup> See, e.g., Docket No. A82-10, *In re Oceana Station, Virginia Beach, Virginia*, Order No. 436, June 25, 1982, at 4 (*Oceana Station*).

branch is a “post office.” The Commission has considered the Postal Service’s arguments in previous decisions and will not revisit the dispute here.<sup>33</sup>

The *East Elko* decision cited by the Postal Service relied upon two other orders in which the Commission found closings of stations or branches to be rearrangements of postal facilities within a community and not closings subject to review under section 404(d). Those orders dealt with factual situations that are strikingly similar to the situation presented here.

In *Oceana Station*, the Postal Service sought to close the station as part of a plan to rearrange retail and carrier facilities in an area of Virginia Beach. The plan included the construction of a new facility and the shifting of services and employees around the area to enhance the postal network.

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<sup>33</sup> See Docket No. A2006-1, *In re Observatory Finance Station Pittsburgh, PA 15214-0651*, Order No. 1480, September 29, 2006, at 6-12 (*Observatory Station*). For a recent explication of the Postal Service’s position, see Docket No. A2010-3, Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), April 19, 2010.

The Commission stated:

The Postal Service's decision to close the Oceana station must be considered within the context of the Postal Service's other actions in the area. The Postal Service's decision constitutes a moving of facilities within the community rather than an elimination of facilities or a change in management within the scope of the statutory provisions. If the Postal Service had decided to close the Oceana station and build a new facility across the street, the action would not be a closing within the meaning of the statute. That principle may be equally apposite—as we think it is here—when the Postal Service is considering the set of offices serving a community.

*Oceana Station* at 7-8.

In *Ecorse Branch*,<sup>34</sup> the Postal Service constructed a new retail facility 1.7 miles away and decided to close the Ecorse Branch since customers could obtain the same services at the new facility. The Commission noted that:

[T]he Administrative Record includes information showing that the Postal Service opened a new, larger facility 1.7 miles away from the Ecorse Branch. This new River Rouge facility has the same retail services as the Ecorse Branch and was designed, among other things, to take over and replace the workload and retail services offered at the Ecorse Branch. The opening of this new facility was one of the chief justifications for the Postal Service's decision to close the Ecorse Classified Branch.

*Ecorse Branch* at 6.

In this case, as in the *Oceana Station* and *Ecorse Branch* proceedings, the closure of the postal facility is part of a broader plan to rearrange the postal network. In this case, the Postal Service states that the new Falls Church facility at 800 West Broad Street is located 2 miles away from the Pimmit Branch.<sup>35</sup> Final Determination at 2. In *Oceana*, the new facility was 4 miles from the station being closed. *Oceana Station* at 4. In *Ecorse Branch*, the new facility was 1.7 miles from the branch being closed. *Ecorse Branch* at 6.

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<sup>34</sup> Docket No. A2007-1, *Ecorse Classified Branch, Ecorse, Michigan*, Order No. 37, October 9, 2007 (*Ecorse Branch*).

<sup>35</sup> According to MapQuest, the distance is 1.7 miles. See n.29, *supra*.

The Administrative Record in this proceeding demonstrates that, from the outset, discontinuance of the Pimmit Branch was possible as part of a broader plan to rearrange the postal network in Falls Church. This does not mean that discontinuance was a foregone conclusion at the outset. Rather, it was a consideration as the Postal Service planned services to be available to the Falls Church community.

In this proceeding, the Postal Service entered into a long-term lease for the facilities at 800 West Broad Street with the expectation of closing the Pimmit Branch. In *Oceana Station* and *Ecorse Branch*, the Postal Service built new facilities that replaced the facilities being closed. In all three of these cases, the facility closures were part of a broader plan to rearrange postal networks. Indeed, Petitioner herself acknowledges that “[t]he plan to close the Pimmit Branch was presumably an integral part of the planning for the relocation of retail services to 800 W. Broad Street.” Petitioner’s Reply at 11. The existence of this plan is amply supported by the Administrative Record. See Administrative Record, Item No. 1 at 1 (Authority to Conduct Investigation); *id.* Item No. 2 at 1-2 (Taylor/Voorhees Letter and Cox/Voorhees Letter); *id.* Item No. 8 (Post Office Closing or Consolidation Proposal Fact Sheet, Response to Item No. 7); *id.* Item No. 9 (Questionnaire Transmittal Letter); and *id.* Item No. 22 at 7 (Proposal to Close the Pimmit Branch, Falls Church, Virginia).

## VI. CONCLUSION

The closing of the Pimmit Branch was part of a rearrangement of retail facilities in the Falls Church, Virginia area. The Commission has consistently held that the requirements of section 404(d) do not apply to such rearrangements. Accordingly, this proceeding is dismissed. Because the Commission lacks jurisdiction to consider Petitioner’s substantive arguments, her pending motions are denied.

*It is ordered:*

1. Docket No. A2011-90 is dismissed for lack of jurisdiction.
2. All pending motions not granted herein are hereby denied.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

Vice Chairman Langley not participating.